

# Order

**Michigan Supreme Court  
Lansing, Michigan**

May 7, 2009

Marilyn Kelly,  
Chief Justice

137400  
137407

Michael F. Cavanagh  
Elizabeth A. Weaver  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway,  
Justices

INSURANCE INSTITUTE OF MICHIGAN,  
HASTINGS MUTUAL INSURANCE  
COMPANY, FARM BUREAU GENERAL  
INSURANCE COMPANY, FRANKENMUTH  
CASUALTY INSURANCE, WALTER  
STAFFORD, JR., and MICHAEL FLOHR,  
Plaintiffs-Appellees,

and

MICHIGAN INSURANCE COALITION and  
CITIZENS INSURANCE COMPANY OF  
AMERICA,  
Intervening Plaintiffs-Appellees,

v

SC: 137400  
COA: 262385  
Barry CC: 05-000156-CZ

COMMISSIONER, FINANCIAL & INSURANCE  
SERVICES, DEPARTMENT OF LABOR &  
ECONOMIC GROWTH,  
Defendant-Appellant.

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HASTINGS MUTUAL INSURANCE  
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CASUALTY INSURANCE, WALTER  
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On order of the Court, the applications for leave to appeal the August 21, 2008 judgment of the Court of Appeals are considered, and they are GRANTED. The parties shall include among the issues to be briefed: (1) whether, under § 64 of the Administrative Procedures Act, MCL 24.264, the plaintiffs were permitted to bring an original declaratory judgment action in the circuit court without having first requested a declaratory ruling from the defendant; (2) whether § 244(1) of the Insurance Code, MCL 500.244(1), provides the exclusive means of seeking judicial review of rules promulgated by the defendant; (3) whether judicial review of the challenged administrative rules was limited to the administrative record prepared during the public hearing process, see § 104(3) of the APA, MCL 24.304(3), and *Michigan Assoc of Home Builders v Michigan Dep't of Labor and Economic Growth*, 481 Mich 496 (2008); and (4) whether the challenged administrative rules (a) violated the plaintiffs' due process rights, (b) were valid and enforceable under the Insurance Code, (c) were arbitrary and capricious, or (d) exceeded defendant's rulemaking authority.

The motion for expedited consideration is considered, and it is GRANTED. The Clerk of the Court is directed to place this case on the October 2009 session calendar for argument and submission. The Insurance and Indemnity Law Section of the State Bar of Michigan, the American Insurance Association, the Michigan Consumer Federation, and the National Consumer Law Center are invited to file briefs amicus curiae.

Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 7, 2009

*Corbin R. Davis*

Clerk